

Message Text

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PAGE 01 LIMA 04406 261644 Z

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S E C R E T LIMA 4406

EXDIS

E. O. 11652: GDS

TAGS: OCON, CI

SUBJECT: COPPER DISCUSSIONS WITH CHILE

REF: LIMA 4355

1. FOLLOWING AN INFORMAL SOCIAL GET TOGETHER AT CHILEAN EMBASSY FOR LUNCH, JUNE 24 EVENING SESSION STARTED WITH CHILEAN SIDE READING LIST OF 13 QUESTIONS, NINE OF WHICH SPECIFICALLY ADDRESS US PROPOSAL AND BALANCE ARE ON RELATED ISSUES. ASKED BY KUBISCH WHETHER CHILEAN SIDE HAD ANY GENERAL REACTION TO PROPOSAL, ALMEYDA SAID US PROPOSAL TAKES INTO ACCOUNT TWO ELEMENTS GOC CONSIDERS NECESSARY: (A) ADOPTION OF PROCEDURE THAT WOULD ALLOW FOR MORE TIME DURING WHICH CLIMATE CONDUCIVE TO SETTLEMENT WOULD IMPROVE AND (B) INTERVENTION OF NEUTRAL THIRD PARTY. HOWEVER CHILEAN SIDE HAD ADDITIONAL OR THIRD ELEMENT WHICH IT ALWAYS CONSIDERED WAS NECESSARY BUT WHICH IT COULD NOT SEE IN US PRPPSAL. THIRD GOC ELEMENT CONCERNED POLITICO- JURIDICAL LIMITS WITHIN WHICH SOLUTION MUST BE FOUND AND WHICH STEM FROM FACT COPPER NATIONALIZATION IS CONSITUTIONAL MATTER. ACCORDINGLY, IF US PROPOSAL ACCEPTED, ARBITRATION WOULD REQUIRE PRIOR CHILEAN CONGRESS APPROVAL AND PREVAILING POLITICAL CONDITIONS, PUBLIC AND CONGRESSIONAL ATTITUDES MAKE SUCH STEPS POLITICALLY UNVIALE.

2. ALMEYDA STATED US PROPOSAL IN FINAL ANALYSIS IN PURELY AND SIMPLY AN ARBITRATION PROCEDURE WHICH HAD ALREADY BEEN
SECRET

SECRET

PAGE 02 LIMA 04406 261644 Z

RAIDED AND ALREADY REJECTED BY MIN LETELLIER. THEREFORE PROPOSAL DOES NOT REPRESENT SIGNIFICANT STEP FORWARD. HE INDICATED IF US PROPOSAL IS MODIFIED AND COMPLEMENTED IN SUCH WAY AS TO MAKE IT POLITICALLY AND LEGALLY COMPATIBLE WITH CHILEAN SITUATION, IT REAPPEARS AS 1914 TREATY FORMULA (WHICH ITSELF COULD BE SUBJECT TO ADAPTION TO EMBRACE ASSURANCES U. S. SIDE SEEKS). THIS IS PREFERRED CHILEAN POSITION AS IT DOES NOT INVOLVE PRIOR CONSULTATION WITH CONGRESS.

3. KUBISCH EXPRESSED DISAGREEMENT WITH CHILEAN CONTENTION US PROPOSAL DOES NOT REPRESENT SIGNIFICANT STEP FORWARD. SAID USG HAD GONE TO GREAT LENGTHS TO FORMULATE PROPOSAL AND OBTAIN APPROVAL WITHIN GOVERNMENT. KUBISCH CHARACTERIZED IT AS SIGNIFICANT STEP NOT ONLY FOR WHAT IT STATES BUT ALSO FOR WHAT IT IMPLIES IN TERMS OF OVERALL US ATTITUDE TOWARDS CHILE. KUBISCH NOTED THAT US PROPOSAL ALSO CONTAINS THIRD ELEMENT, NAMESLY, THAT PROCEDURE MUST LEAD TO CONCLUSIVE SOLUTION OF MATTER. HENNESSY ADDED THAT IT WOULD BE IMPORTANT TO DETERMINE WHETHER RESPECTIVE US AND CHILEAN THIRD POINTS WERE INCOMPATIBLE OR IF GOOD FAITH, GOOD TECHNICIANS AND HARD WORK COULD FIND WAY OF ACCOMMODATING BOTH.

4. DURING COURSE OF LONG EXCHANGES KUBISCH ASKED AT ONE POINT WHETHER CHILEAN SIDE WAS REJECTING US PROPOSAL. ALMEYDA POINTED TO HIS MORNING STATEMENT THAT HE INSTRUCTED TAKE US PROPOSALS TO GOC WHERE CHILEAN POSITION WOULD BE DECIDED AT HIGHEST LEVEL. THEREFORE THIS NOT FORMAL REJECTION. HE ALSO NOTED THAT US SIDE HAD NOT FORMALLY REJECTED 1914 TREATY APPROACH AND URGED ITS CAREFUL ANALYSIS AS POSSIBLE ROUTE TOWARDS SOLUTION OUR PROBLEMS.

5. MEETING DECIDED WOULD BE USEFUL PROCEED WITH REPLIES TO CHILEAN QUESTIONS AT SESSION NEXT DAY WITH PRESENCE OF EXPERTS. IT WAS FELT REPLYING TO QUESTIONS COULD CONTRIBUTE TO DEVELOP TRUE MEANING OF US PROPOSAL AND PERHAPS SHED LIGHT ON HOW IT MIGHT FIT POLITICAL- JURIDICAL PROBLEMS ALLUDED TO BY CHILEANS.

6. THERE WAS ALSO DISCUSSION OF DIFFERENT EFFECTS IN CHILE OF INVOKING 1914 OR 1929 TREATIES. U. S. READING OF TERMS OF 1929 TREATY DO NOT REVEAL ANY OBLIGATION FOR PRIOR SUBMISSION TO CHILEAN CONGRESS BUT TREATY SETS SYSTEM IN MOTION PROCEDURE OF ARBITRATION
SECRET

SECRET

PAGE 03 LIMA 04406 261644 Z

WHICH BINDING. US ADMITTED ULTIMATE ARBITRAL DECISION COULD EVENTUALLY REQUIRE CHANGES IN CHILEAN LEGISLATION (AND EVEN CONSTITUTION IN COPPER CASES) IN ORDER TO IMPLEMENT. CHILEANS SUSTAINED THAT THIS IMPLIES INEVITABLY PRIOR SUBMISSION TO CONGRESS TO OBTAIN APPROVAL. PROCEDURE IN 1914 TREATY DIFFERENT BECAUSE IT ENVISAGES SUCCESSIVE STATES OF (A) REPORT OR INVESTIGATION (NOT BINDING); (B) CONCILIATION AND (C) ARBITRATION.

CHILEANS SAID THEIR PUBLIC AWARE OF GOC INTENTION TO INVOKE 1914 TREATY AND HAD TACITLY ACCEPTED IT. HOWEVER, IN ANSWER TO SPECIFIC KUBISCH QUESTION , ALMEYDA STATED GOC HAD NOT TAKEN ANY FIRM DECISION UNILATERALLY TO INVOKE 1914 TREATY.

7. HENNESSY RAISED POINT THAT SINCE 1914 DID NOT PROVIDE FOR ANY BINDING SOLUTION, IT WOULD NOT CHANGE US FINANCIAL/ ECONOMIC POSTURE, PARTICULARLY GIVEN GONZALEZ CONDITIONS, SO THAT IT WOULD NOT PROVIDE GOC WITH ANY SOLUTION EITHER TO THEIR CONCERNS IN THIS REGARD, AND THAT PRECISELY WAS THE ADVANTAGE OF OUR OFFER-- IT WOULD PROVIDE FOR A SOLUTION AND FREE OUR HANDS UNDER GONZALEZ. ALMEYDA RETURNED TO APPROPRIATENESS OF 1914 TREATY WHICH IF APPLIED WOULD OPERATE TO PROGRESSIVELY IMPROVE CLIMATE IN CHILE AND, IF NOT GUARANTEE DEFINITIVE SETTLEMENT , AT LEAST MAKE FINAL SOLUTION POSSIBLE. HE EXPRESSED CONFIDENCE 1914 TREATY PROCEDURE WOULD NOT ONLY ALLOW PARTIES TO CONTINUE TALKING BUT BRING PROBLEM INTO THIRD STATE OF ARBITRATION UNLESS, OF COURSE, NEW AND MORE SERIOUS PROBLEMS ARISE.

8. BOTH SIDES AGREED TO MEET AGAIN AT 10:30 AM JUNE 25.

9. COMMENT: THE NET OF THIS VERY LONG EVENING SESSION WAS A REITERATION OF PREVIOUS POSITIONS OF CHILE OF THE POLITICAL/ JURIDICAL CONSTRAINTS WHICH, IN EFFECT, MADE IT IMPOSSIBLE FOR GOC TO ACCEPT ANY BINDING PROCESS NOW. THEIR STRATEGY IN SESSION WAS TO CONTINUE TO EMPHASIZE THAT ALL OUR CONCERNS COULD BE MET THROUGH MODIFICATIONS AND ADAPTATIONS OF 1914, BUT THAT CONVERSELY ALL THEIR POLITICAL/ JURIDICAL PROBLEMS COULD NOT BE OVERCOME THROUGH OUR PROPOSAL. THEY DID TAKE CARE NOT TO REJECT OUR PROPOSAL BUT ON OTHER HAND DID NOT EVIDENCE ANY WILLINGNESS TO ADMIT IT WAS A POSSIBLE VEHICLE.
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